

***RESPONSE UNDER 37 C.F.R. § 1.111***  
***U. S. Application No. 10/655,214***

**REMARKS**

Claims 1-11 are all the claims pending in the application.

Claims 1-11 are rejected under 35 U.S.C. § 102(b) as being anticipated by Kato et al. (US 5,664,529).

Kato relates to a valve timing control apparatus that continuously controls the valve timing in accordance with the running conditions of the engine.

Applicant submits that Kato fails to teach or suggest all of the limitations of the claims of the present invention. In particular, with regard to claim 1, Applicant submits that Kato does not disclose a failure detecting means, which modifies a failure detection condition according to whether or not learning is completed by the learning means. The Examiner asserts that Kato discloses this feature of claim 1 in col. 13, lines 3-58. Applicant respectfully disagrees. The cited excerpt describes steps 150, 125, and 160 of the method illustrated in FIG. 8 of Kato. For example, the cited excerpt discloses the ECU 80, in step 150, sets a previously computed value of a drive duty ratio DVT as a learning value GDVTH and updates the learning value GDVTH with a value of the drive duty ratio DVT to thereby learn the learning value GDVTH; the ECU 80 sets the current learning value GDVTH as the value of the drive duty ratio DVT, in step 125; and in step 160, when the value of the actual displacement angle VT nearly matches with the value of the target displacement angle VTT, the ECU 80 switches the value of the drive duty ratio DVT to be sent to the linear solenoid valve (LSV) 55 to the learning value GDVTH for sustaining the rotational phase of cam shaft 10 constant. However, neither FIG. 8 nor the cited excerpt discloses or even suggests that a failure detection condition is modified according to

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whether or not learning is completed by the learning means. Therefore, Applicant submits that claim 1 is not anticipated by Kato.

Claims 2-11 are not anticipated by Kato, at least because of their dependence from claim 1.

With further regard to claim 2, Applicant submits that Kato does not teach or suggest that the failure detecting means modifies a duration until a failure is detected, according to whether or not learning is performed by the learning means as a failure detection condition. The Examiner points to col. 13, lines 3-58 as allegedly disclosing this feature of the claim. However, Applicant submits that the cited excerpt is silent with respect to this feature of claim 2. At best, Kato is ambiguous on this point. The ambiguousness of the reference should be held against the Examiner, not the Applicant. For this additional reason, Applicant submits that claim 2 is not anticipated by Kato.

For claim 3, Applicant submits that Kato fails to teach or suggest that the failure detecting means sets the duration until the failure is detected to be longer before than after the learning is performed by the learning means. Here, the Examiner refers to col. 17, line 48 - col. 18, line 3 of Kato. The cited excerpt discusses a value of a drive duty ratio remaining unchanged for a predetermined time, but the excerpt does not describe setting a duration until a failure is detected to be longer before learning is performed than a duration until a failure is detected after learning is performed. Such a distinction is not made in the cited excerpt. Thus, claim 3 is not anticipated by Kato for this reason also.

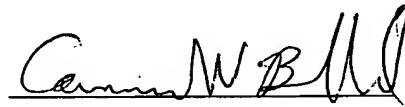
With regard to claims 6, 7 and 9, Applicant submits that these claims are not anticipated by Kato for reasons analogous to those described above in relation to claim 3.

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In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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